REMARKS

Claims 1-3, 5-19, 21-32 are pending in this application. No new matter has been added by this paper. Claims 1-3, 5-15, 17-19, 21-31 stand rejected under 35 U.S.C. §103 over Statutory Invention Registration H1419 to Wilpers et al. ("Wilpers") in view of WO 97/47468 in the name of Tsai ("Tsai"). Claims 16 and 32 stand rejected under 35 U.S.C. §103 over Wilpers in view of U.S. Patent No. 5,529,833 to Speer et al. ("Speer").

I. EXAMINER INTERVIEW

In January of 2007 Examiner Dye and the undersigned attorney discussed the outstanding rejections and Applicants' June 19, 2006 Amendment in a telephone conversation. The undersigned attorney informed the Examiner that Applicants would submit a declaration in support of the contention that a person of ordinary skill in the art would not look to Tsai for teachings of the amount of adhesive to employ in a reheat stretch blow molded container. No agreement was reached as to the allowability of any claim. Applicants thank the Examiner for the courtesies extended in the telephone conversation.

II. ADHESIVE AMOUNT

The Office Action expressly recognizes that Wilpers fails to teach the amount of adhesive recited in claims 2, 3, 18 and 19, but rejects those claims based on the combination of Wilpers and Tsai, which the Office Action states discloses the claimed amount of adhesive. Whether or not Tsai teaches the claimed amount of adhesive, one of ordinary skill in the art would not look to Tsai for teachings of the amount of adhesive.

By way of background, the reheat stretch blow molding process entails injection molding a "preform" and letting the preform cool to ambient temperature. *Knoll Decl.* ¶6. The preform is then reheated and then blown. *Id.* The preform is typically blown while in the "rubbery state" which occurs somewhere between the glass transition temperature and the melting point. *Id.*

Blow molding in this rubbery state provides strength to the container through crystallization and orientation of the polymer chains. *Knoll Decl.* ¶7. The strength achieved from reheat stretch blow molding comes at a cost. Blow molding in the rubbery state breaks many of the bonds between layers in the preform. *Id.* One of ordinary skill in the art understands that up to 90% of the bonding strength between layers is lost due to the breaking of bonds during reheat stretch blow molding. *Id.* Because of the loss of bonding strength experienced with reheat stretch blow molding, one of ordinary skill in the art understands that a preform must have substantially more bonding strength than required by the final blown product to compensate for the up to 90% loss of bonding strength during blow molding. *Id.* Where the bonding strength is provided by an adhesive, that compensation is achieved by increased amounts of adhesive. *Id.*

Applicants wish to note that they have discovered the statement in the June 19, 2006 Amendment that films are "not stretched in the rubber state" is not accurate. However, persons of ordinary skill in the art understand that films do not experience a loss of bonding of the magnitude experienced with reheat stretch blow molding. The Declaration of Dr. Robert Knoll submitted herewith confirm that persons of ordinary skill in the art understand that there are significant practical differences between multilayer containers and multilayer films. *Knoll Decl.*

¶8. As a result, given the same adhesive, the amount of that adhesive used in a film is unlikely to be sufficient in a container for adhering layers. *Id.* Accordingly, one of ordinary skill in the art would not look to Tsai for teachings of amounts of adhesive to employ in a reheat stretch blow molded container. *Knoll Decl.* ¶9.

Neither Wilpers nor Wilpers in view of Tsai can then teach or suggest using the amount of adhesive recited in claims 2, 3, 18 and 19.

III. BIAXIAL ORIENTATION

Wilpers makes no mention of biaxially oriented containers. The Office Action specifically recognizes that Wilpers provides no such teaching, but asserts that that it would have been obvious to apply the teachings of Wilpers to biaxially oriented containers simply because Wilpers teaches containers. Thus, this portion of the obviousness rejection requires that Wilpers set off two separate and sequential understandings for one of ordinary skill in the art. First, the skilled artisan must make the mental leap that Wilpers' composition is appropriate for application in biaxially oriented containers. Second, for claims 2, 3, 18 and 19, that artisan must make the additional and subsequent mental leap to experiment with varying amounts of adhesive (which step is an improper basis for rejection as discussed above) to arrive at the claimed amounts of adhesive required for biaxially oriented containers.

The necessity of multiple mental steps speaks against obviousness. The test under §103 is not what "one might contemplate," but whether the references, taken as a whole, would

suggest the invention to one of ordinary skill in the art. *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, ___ (Fed. Cir. 1983).

VI. HAZE

Wilpers provides no discussion whatsoever, let alone a teaching, of haze or how haze may be effected by adhesive. The Office Action reasons that the combination renders obvious the claimed structure, and so the haze values recited in claims 1, 5, 17 and 21 must be inherent in that obvious structure. However, the foundation of this inherency argument fails because, as stated above, the claimed structure is not obvious.

CONCLUSION

A petition for two months extension of time to respond to the outstanding Office Action is submitted herewith. Applicants submit that this application is in condition for allowance. Early action to that end is respectfully requested.

Respectfully submitted,

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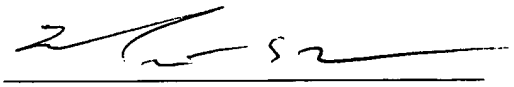

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